



RULE-MAKING ORDER

CR-103 (June 2004)
(Implements RCW 34.05.360)

Agency: Department of Labor and Industries

☐ Permanent Rule
☒ Emergency Rule

Effective date of rule:

Permanent Rules

☐ 31 days after filing.
☐ Other (specify) _____ (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

Effective date of rule:

Emergency Rules

☐ Immediately upon filing.
☒ Later (specify) June 1, 2006

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

☐ Yes ☒ No If Yes, explain:

Purpose: Temperature Extremes (Heat Stress), WAC 296-62-09013

See Attachment 1

Citation of existing rules affected by this order:

Repealed: n/a
Amended: WAC 296-62-09013, Temperature extremes.
Suspended: n/a

Statutory authority for adoption: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060

Other authority : None

PERMANENT RULE ONLY (Including Expedited Rule Making)

Adopted under notice filed as WSR _____ on _____ (date).
Describe any changes other than editing from proposed to adopted version:

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

Name: _____ phone () _____
Address: _____ fax () _____
e-mail _____

EMERGENCY RULE ONLY

Under RCW 34.05.350 the agency for good cause finds:

- ☒ That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
- ☐ That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this finding:

A review of the accepted heat-related illness claims indicated that 350 outdoor heat-related illness incidents occurred from 1995 – 2004. This rule clarifies that the requirement to protect workers from temperature extremes applies to outdoor environments. This rule is intended to reduce or eliminate the number of serious incidents and fatalities by increasing worker protection from temperature extremes while the department is evaluating the need for a permanent rule. An emergency rule is necessary to ensure protection of workers during the summer months when there is a greater risk for heat-related illness. The department intends to provide awareness training for employers over the summer.

Date adopted: May 23, 2006

NAME (TYPE OR PRINT)

Gary K. Weeks

SIGNATURE

TITLE

Director

CODE REVISER USE ONLY

WSR# 06-11-144

(COMPLETE REVERSE SIDE)

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New	_____	Amended	_____	Repealed	_____
Federal rules or standards:	New	_____	Amended	_____	Repealed	_____
Recently enacted state statutes:	New	_____	Amended	_____	Repealed	_____

The number of sections adopted at the request of a nongovernmental entity:

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted in the agency's own initiative:

New	_____	Amended	<u>1</u>	Repealed	_____
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted using:

Negotiated rule making:	New	_____	Amended	_____	Repealed	_____
Pilot rule making:	New	_____	Amended	_____	Repealed	_____
Other alternative rule making:	New	_____	Amended	<u>1</u>	Repealed	_____

Purpose:

On July 18, 2005, a farm worker collapsed while cutting weeds with a machete in hop fields near Yakima. He died, and the coroner ruled that the cause of death was heat stroke. L&I investigated the death and later cited and fined the company for an inadequate safety program, not providing drinking water, and lack of training for workers. The safety program should have included a plan to prevent heat stress by providing rest breaks, shade, worker hydration and administrative controls such as a work-rest regimen.

The citation was issued December 23, 2005, and the subsequent appeal was affirmed with a negotiated penalty of \$3,000. L&I did not seek criminal sanctions since the violations cited were not considered willful (a prerequisite for a referral to a county prosecuting attorney).

Immediately following this workplace death, we heard from farm worker advocates that they were very concerned about this fatality and that they wanted an emergency rule issued similar to California's emergency heat-stress rule. L&I responded by issuing a hazard alert to the agriculture industry, and then proceeded with a study to determine what was needed to protect workers for the 2006 summer season.

L&I reviewed the workers' compensation injury and illness claims for the past 10 years and found that one other person had died from heat stress in Washington (also in the Yakima area in a lawn-service business). We also found approximately 450 workers' compensation claims for heat-related illness during that same time. These fatalities may have been prevented with rules that are more protective of workers.

During the past eight months, L&I considered the available options:

- Do nothing.
- Change an existing rule on indoor work in hot temperatures to include outdoor work in hot temperatures.
- Propose a new standard on heat stress.

During that time, we held extensive meetings with business and labor representatives and worker advocates, and began developing an awareness and education campaign that would occur this summer regardless of the final decision.

In the end, we concluded that the best approach was to adopt an emergency rule that extends an existing rule on indoor work in hot temperatures to include outdoor work. The emergency rule will be effective as of June 1.

The emergency rule says that every employer must evaluate their workplace and have procedures in place if their employees will be at risk from heat-related illnesses. They will be required to look at things such as adequate water and shade, how to recognize heat stress, and what to do about it.

L&I will be launching a coordinated hazard-awareness campaign with business and labor organizations. We will be concentrating on businesses most affected by hot weather, such as construction – especially road work – and agriculture.

As part of regularly scheduled inspections and consultations in affected industries, L&I staff also will be visiting farms and other employers all summer to make sure they are protecting their workers from heat stress.

We acknowledge that some worker advocate groups feel very strongly about the heat-stress issue and don't believe this emergency rule is specific enough. On the other hand, some employers wanted no rule at all.

We believe it was important to have a program in place this summer, along with an educational and awareness effort. The emergency rule is effective for 120 days. As the year goes by, we will evaluate the impact of the rule and gather information to determine what to do on a permanent basis.